

REMARKS/ARGUMENTS

The non-final Office Action of December 22, 2008, has been reviewed and these remarks are responsive thereto. Claims 3, 7-10, 13-16, 19-21, and 23-28 have been amended, no claims have been canceled, and new claim 29 has been added. No new matter has been introduced. Claims 3, 5-11, 13-21, and 23-29 are pending in this application upon entry of the present amendments. Entry of the amendments, reconsideration and allowance of the instant application are respectfully requested.

Interview Summary

Preliminarily, Applicants note with appreciation the courtesies extended by Examiner Hamilton to the inventor Mr. Steven Jackowski and Applicants' attorney Mr. Fred Meeker during the personal interview of June 8, 2009. The following remarks include Applicants' substance of interview pursuant to MPEP § 713.04.

Examiner and applicant agreed that upon submission of this response, that the case would be sent to the EIC for additional search to ensure that all of the relevant art was cited in the case.

Rejections Under 35 U.S.C. § 101

Claims 3, 5-11, 13-21, and 23-28 stand rejected under 35 U.S.C. § 101, as being directed to non-statutory subject matter. Specifically, the Office Action alleges that the pending claims are not tied to another statutory class, and do not transform an underlying subject matter to a different state or thing. (Office Action, p. 2) Applicants respectfully traverse. Amended claim 3 recites a method which is tied to a particular machine or apparatus, *i.e.*, the first computer. Specifically, amended claim 3 is directed to a "computer implemented method" that recites, in part, "storing by a first computer an account in a computer memory for each of a plurality of users of the network, each account comprising data . . .," and "crediting by the first computer at least one of the upstream and downstream network usage balance of the respective account in the computer memory on an intermittent basis." Amended method claims 21 and 24-28 are also tied to a particular machine or apparatus, *i.e.*, the recited "first computer." It is thus believed that method claims 3, 5-11, 13-21, and 23-28 are each tied to a particular machine and/or apparatus, and therefore meet the requirements of 35 U.S.C. §101 in accordance with *In re Bilski*, 88

USPQ2d 1385 (Fed. Cir. 2008)(*en banc*). Should the Examiner contend that the recited language does not accomplish such objective, Applicants respectfully request consultation with Applicants' undersigned counsel.

Rejections Under 35 USC § 103

Claims 3, 5-11, 13-21, and 23-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Appl. Pub. No. 2003/0027549 ("Kiel"), in view of U.S. Patent No. 7,113,497 ("Cromer"). Applicants traverse for at least the following reasons.

Amended claim 3 recites, in part, when a network usage balance of a user of a network drops below a defined usage level for the account, "imposing a more restrictive bandwidth on the continuing network usage of that user." The Office Action correctly acknowledges on page 3 that Kiel does not teach decreasing or increasing bandwidth allocations to user based on network usage by the user, but then alleges that Cromer teaches bandwidth management at col. 8, lines 11-60. However, as discussed with the Examiner in detail during the personal interview of June 8, 2009, neither Kiel nor Cromer teaches or suggests "imposing a more restrictive bandwidth on the continuing network usage" of a user based on a network usage balance. Rather, Cromer (like Kiel) only describes completely blocking individual users that exceed real time bandwidth usage rates, as an attempt to remedy short term network congestion. For instance, the relied upon sections of Cromer all related to adding or removing a user from a 'Restricted List' (see FIG. 3). Cromer further describes in reference to FIG. 4 (see step 404), users on the Restricted List are completely blocked from accessing the network:

If the client's IP address is found on the Restricted List, its bandwidth utilization has exceeded the current threshold, and the access point will not respond to the client's RTS with a CTS.

Col. 9, lines 7-10. Simply blocking certain users is not the same or equivalent to imposing a more restrictive bandwidth on continuing network usage of users, as recited in amended claim 3. Therefore, since neither Kiel nor Cromer, alone or in combination teaches or suggests "imposing a more restrictive bandwidth on the network usage of that user," amended claim 3 is not obvious over the cited references.

Additionally, amended claim 3 recites storing “an upstream and a downstream network usage balance,” and imposing the more restrictive bandwidth “when either the upstream or downstream balance of the account of a user of the network drops below the defined usage level.” (Emphasis added). In contrast, neither Kiel nor Cromer, alone or in combination, teaches or suggests storing separate upstream and downstream usage balances, or making a bandwidth restriction determination based on *either* the upstream or downstream usage balances. Accordingly, for at least these additional reasons, amended claim 3 is not obvious over the alleged combination of Kiel and Cromer.

Amended independent claims 21 and 24-28 each recite similar features relating to increasing or decreasing bandwidth availability for users based on the network usage of those users. Therefore, for reasons similar to those discussed above regarding claim 23, claims 21 and 24-28 are not obvious over the cited references. Dependent claims 5-11, 13-20, and 23 are allowable over the cited references for at least the same reasons as their respective independent claims, as well as based on the additional patentable features recited therein.

For example, amended claim 7 recites, “imposing a less restrictive bandwidth on the continuing network usage of that user.” As discussed above, Kiel and Cromer, only describe completely blocking or completely allowing network access to users. Therefore, neither reference, considered alone or in combination, teaches or suggests “imposing a less restrictive bandwidth on the continuing network usage of that user,” as recited in claim 7.

New Claims

Applicant has added new claim 29 to more fully claim the invention. Independent claim 29 is directed to an apparatus configured to perform a method similar to the method of claim 3. Thus, for the similar reasons to those discussed above in reference to claim 3, new claim 29 is allowable over the cited references.

CONCLUSION

Based on the foregoing, Applicants respectfully submit that the application is in condition for allowance and a Notice to that effect is earnestly solicited. Should the Examiner believe that anything further is desirable in order to place the application in even better form for allowance, the Examiner is respectfully urged to contact Applicants' undersigned representative at the below-listed number.

Respectfully submitted,
BANNER & WITCOFF, LTD.

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